

SECOND DIVISION

[G.R. No. 143647, November 11, 2005]

**YUSUKE FUKUZUME,* PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision^[1] of the Court of Appeals (CA) dated March 13, 2000 in CA-G.R. CR No. 21888, which affirmed with modification the judgment of the Regional Trial Court (RTC) of Makati, Branch 146 dated October 21, 1996 in Criminal Case No. 95-083, finding herein accused-appellant guilty beyond reasonable doubt of the crime of estafa, sentencing him to suffer the penalty of imprisonment for twenty (20) years and to pay private complainant the sum of P424,000.00; and the CA Resolution dated June 16, 2000 denying petitioner's motion for reconsideration.^[2]

The facts of the case are as follows:

Private complainant Javier Ng Yu (Yu) is a businessman engaged in buying and selling aluminum scrap wires.^[3] Sometime in July 1991, Yu, accompanied by a friend, Mr. Jovate,^[4] who was the vice-president of Manila Electric Company, went to the house of herein accused-appellant Yusuke Fukuzume (Fukuzume) in Parañaque.^[5] Jovate introduced Fukuzume to Yu telling the latter that Fukuzume is from Furukawa Electric Corporation (Furukawa) and that he has at his disposal aluminum scrap wires.^[6] Fukuzume confirmed this information and told Yu that the scrap wires belong to Furukawa but they are under the care of National Power Corporation (NAPOCOR).^[7] Believing Fukuzume's representation to be true, Yu agreed to buy the aluminum scrap wires from Fukuzume.^[8] The initial agreed purchase price was P200,000.00.^[9] Yu gave Fukuzume sums of money on various dates which eventually totaled P290,000.00, broken down as follows: P50,000.00, given on July 12, 1991; P20,000.00, given on July 22, 1991; P50,000.00, given on October 14, 1991; and, P170,000.00, given on October 18, 1991.^[10] Fukuzume admitted that he received the same from Yu and that he still owes him the amount of P290,000.00.^[11] To support his claim that the aluminum scrap wires being sold are indeed owned by Furukawa, that these scrap wires are with NAPOCOR, and that Furukawa's authorized representatives are allowed to withdraw and dispose of said scrap wires, Fukuzume gave Yu two certifications dated December 17, 1991 and December 27, 1991 purportedly issued by NAPOCOR and signed by its legal counsel by the name of R. Y. Rodriguez.^[12] At the time that Fukuzume gave Yu the second certification, he asked money from the latter telling him that it shall be given as gifts to some of the people in NAPOCOR. Yu gave Fukuzume money and, in exchange, the latter issued two checks, one for P100,000.00 and the other for

P34,000.00.^[13] However, when Yu deposited the checks, they were dishonored on the ground that the account from which the checks should have been drawn is already closed.^[14] Subsequently, Yu called up Fukuzume to inform him that the checks bounced.^[15] Fukuzume instead told him not to worry because in one or two weeks he will give Yu the necessary authorization to enable him to retrieve the aluminum scrap wires from NAPOCOR.^[16] On January 17, 1992, Fukuzume gave Yu a letter of even date, signed by the Director of the Overseas Operation and Power Transmission Project Divisions of Furukawa, authorizing Fukuzume to dispose of excess aluminum conductor materials which are stored in their depots in Tanay and Bulacan.^[17] Thereafter, Fukuzume agreed to accompany Yu when the latter is going to take the aluminum scrap wires from the NAPOCOR compound.^[18] When Yu arrived at the NAPOCOR compound on the scheduled date, Fukuzume was nowhere to be found.^[19] Hence, Yu proceeded to show the documents of authorization to NAPOCOR personnel. However, the people from NAPOCOR did not honor the authorization letter issued by Furukawa dated January 17, 1992.^[20] NAPOCOR also refused to acknowledge the certifications dated December 17, 1991 and December 27, 1991 claiming that these are spurious as the person who signed these documents is no longer connected with NAPOCOR as of December 1991.^[21] Unable to get the aluminum scrap wires from the NAPOCOR compound, Yu talked to Fukuzume and asked from the latter the refund of the money he paid him.^[22] Fukuzume promised to return Yu's money.^[23] When Fukuzume failed to comply with his undertaking, Yu sent him a demand letter asking for the refund of P424,000.00 plus loss of profits.^[24] Subsequently, Yu filed a complaint with the National Bureau of Investigation (NBI).^[25]

In an Information, dated November 4, 1994, filed with the RTC of Makati, Fukuzume was charged with estafa committed as follows:

That sometime in the month of July, 1991 up to September 17, 1992, in the Municipality of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with intent to prejudice and defraud Javier Yu y Ng, did then and there willfully, unlawfully and feloniously make false representation and fraudulent manifestation that he is the duly authorized representative of Furukawa Electric Co. Ltd., in the Philippines, and was authorized to sell excess aluminum conductor materials not being used by Napocor and Furukawa, the accused knowing full well that those representations were false and were only made to induce and convince said Javier Yu y Ng to buy said materials, who believing said representations to be true, gave and delivered the total amount of P424,000.00 but the accused once in possession of the money, far from complying with his obligation to deliver said aluminum conductor materials to herein complainant, with intent of gain, unfaithfulness and abuse of confidence, applied and used for his own personal use and benefit the said amount and despite repeated demands failed and refused and still fails and refuses to account for, to the damage and prejudice of Javier Yu y Ng in the aforementioned amount of P424,000.00.

CONTRARY TO LAW.^[26]

Upon being arraigned on February 28, 1995, Fukuzume pleaded not guilty.^[27] Trial ensued.

In its Decision dated October 21, 1996, the trial court found Fukuzume guilty as charged. The dispositive portion of the RTC decision reads:

WHEREFORE, all the foregoing premises considered, the Court hereby finds the accused GUILTY beyond reasonable doubt of the crime of estafa and hereby orders him to suffer the maximum penalty of imprisonment for twenty (20) years. With respect to his civil liability, accused is hereby ordered to pay complainant the amount of P424,000.00 plus legal interest from the date of demand until fully paid.

SO ORDERED.^[28]

Aggrieved by the trial court's decision, Fukuzume filed an appeal with the CA.

On March 13, 2000, the CA promulgated its decision affirming the findings and conclusions of the trial court but modifying the penalty imposed, thus:

... although the trial court correctly imposed the maximum penalty of imprisonment for twenty (20) years, it failed to determine the minimum penalty for the offense committed (*prision correccional* in its maximum period to *prision mayor* in its minimum period but imposed in the maximum period), hence, the penalty is modified to six (6) years and one (1) day of *prision mayor* in its minimum period, as the minimum, to not more than twenty (20) years of *reclusion temporal* in its maximum period, as maximum.^[29]

Accordingly, the dispositive portion of the CA Decision reads:

WHEREFORE, the judgment appealed from, except for the aforementioned modification in the prison term of appellant, is hereby AFFIRMED.

SO ORDERED.^[30]

Hence, herein petition filed by Fukuzume based on the following grounds:

THE DECISION OF THE HONORABLE COURT OF APPEALS THAT THE TRIAL COURT OF MAKATI HAS JURISDICTION IS NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT.

THE HONORABLE COURT OF APPEALS HAD DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT WHEN IT CONCLUDED THAT THE ALLEGED FALSE PRETENSE WAS EXECUTED PRIOR TO OR SIMULTANEOUS WITH THE ALLEGED COMMISSION OF THE FRAUD.

THE HONORABLE COURT OF APPEALS HAD DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT BY FAILING TO CONSIDER THAT THE ORIGINAL TRANSACTION BETWEEN THE

PETITIONER AND PRIVATE COMPLAINANT HAD BEEN NOVATED AND CONVERTED INTO A MERE DEBTOR-CREDITOR RELATIONSHIP, THEREBY EXTINGUISHING THE INCIPIENT CRIMINAL LIABILITY THEREOF, IF ANY.

[31]

We agree with Fukuzume's contention that the CA erred in ruling that the RTC of Makati has jurisdiction over the offense charged. The CA ruled:

The trial court of Makati has jurisdiction. Subject to existing laws, in all criminal prosecutions, the action shall be instituted and tried in the court of the municipality or territory wherein the offense was committed or any one of the essential ingredients thereof took place (Rule 110, Sec. 15, Rules of Court). Although the false representation and verbal contract of sale of the aluminum scrap wires took place at appellant's residence in Parañaque, appellant and private complainant nevertheless admitted that the initial payment of P50,000.00 for said transaction was made at the Hotel Intercontinental in Makati City (Record, pp. 15, 68). Hence, an element of the crime – that the offended party was induced to part with his money because of the false pretense – occurred within the jurisdiction of the lower court giving it jurisdiction over the instant case.

The CA ruled on the basis of the sworn statement of Yu filed with the NBI on April 19, 1994^[32] and the affidavit of Fukuzume which was subscribed on July 20, 1994.

[33]

With respect to the sworn statement of Yu, which was presented in evidence by the prosecution, it is clear that he alleged therein that on July 12, 1991, he gave Fukuzume the amount of P50,000.00 at the Intercontinental Hotel in Makati. However, we agree with Fukuzume's contention that Yu testified during his direct examination that on July 12, 1991 he gave the amount of P50,000.00 to Fukuzume in the latter's house. It is not disputed that Fukuzume's house is located in Parañaque. Yu testified thus:

Q Mr. Witness, you testified the last time that you know the accused in this case, Mr. Yusuke Fukuzume?

A Yes, sir.

Q Now, would you enlighten us under what circumstance you came to know the accused?

A I know the accused Mr. Yusuke Fukuzume through Mr. Hubati.

Q And why or how did Mr. Hubati come to know the accused, if you know?

A Mr. Hubati came to my place dealing with the aluminum scrap wires.

ATTY. N. SERING

Your Honor, may I move to strike out the answer. It is not responsive to the question.

COURT

Please wait until the answer is completed.

Q Now, you met this Mr. Hubati. How?

A He came to me offering me aluminum scrap wires.

FISCAL E. HIRANG

Q When was that, Mr. Witness?

A That was in 1991, sir.

COURT

When?

FISCAL E. HIRANG

Your Honor please, may the witness be allowed to consult his memorandum.

A July 12, 1991, sir.

Q And what transpired during that time you met Mr. Hubati?

A We went to the house of Mr. Fukuzume and gave (sic) him some amount of money.

Q Now, would you tell the Court the reason why you parted to the accused in this case the amount of money?

A In payment of the aluminum scrap wires and we have documents to that effect.

Q Now, please tell us what really was that transaction that took place at the house of Mr. Fukuzume on that particular date?

A Our agreement with Mr. Hubati and with Mr. Fukuzume is that, I am going to give money in payment of the aluminum scrap wires coming from Furukawa Electric Company.

Q How much is the amount of money which you agreed to give to the accused?

A Our first agreement was for P200,000.

Q Where is that aluminum scrap located?

A The electric aluminum scrap wires were under the care of the National Power Corporation but according to Mr. Fukuzume it belongs to Furukawa Electric Company.

Q In short, Mr. Witness, on July 12, 1991, you only gave to